



United States General Accounting Office

Report to Congressional Committees

October 1990

PRODUCT LIABILITY

Verdicts in Arizona for 1983-85





United States
General Accounting Office
Washington, D.C. 20548

Human Resources Division

B-240754

October 25, 1990

The Honorable Richard H. Bryan
Chairman, Subcommittee on Consumer
Committee on Commerce, Science,
and Transportation
United States Senate

The Honorable Doug Walgren
Chairman, Subcommittee on Commerce,
Consumer Protection, and Competitiveness
Committee on Energy and Commerce
House of Representatives

In the mid-1980s, businesses and other organizations reported problems obtaining adequate, affordable liability insurance. In response, nationwide attention was focused on the role of litigation, especially trends in the frequency and size of damage awards in court cases, in contributing to problems concerning the cost and availability of liability insurance. At the same time, the Congress and state legislatures debated whether reforming the tort system (the legal rules and judicial procedures for compensating injured parties) would remedy the insurance problems.

Last year, GAO issued Product Liability: Verdicts and Case Resolution in Five States (GAO/HRD-89-99, Sept. 1989) to assist the Congress in its deliberations on uniform product liability law at the federal level.¹ Currently, however, each state establishes its own legal standards for product liability cases. Reform advocates, therefore, have focused much of their efforts on changing state laws. The resultant activity in the states has been widespread, but has varied considerably from state to state.

In general, policymakers and researchers have noted a persistent lack of information, especially at the state level, on awards and the bases of liability. This lack of information makes both congressional and state deliberations about needed reforms difficult. To facilitate these deliberations, for four of the five states reviewed in our earlier report, we are providing detailed state-level information on verdicts in product liability

¹Manufacturers involved in interstate commerce have contended that as a result of variations in state laws, they are being held to different liability rules in different states, further complicating estimation of risk for insurance purposes. We found that federal reforms, if sufficiently clear, would make the application of product liability law more uniform in the 50 states. The impact of such federal reforms would, however, depend on the specifics of the legislation enacted.

Product Liability in Arizona

Tort reform advocates do not consider the state of Arizona to be a problem state in terms of excessive damage awards or inappropriate bases of liability. Little effort, therefore, has been expended to reform product liability law in the state. No bill specifically targeting product liability has been proposed.

Some efforts have been made, however, to change personal injury law; such changes would affect the large majority of product liability cases since these cases are usually brought for personal injury (that is, bodily harm as opposed to contracts, real property, or property damage cases). Most important, in 1987, the legislature abolished the doctrine of joint and several liability in personal injury cases, except in cases of intentional wrongdoing or hazardous waste. Under the doctrine, a defendant may be held responsible for all of a plaintiff's damages even though some degree of fault is attributable to others. The plaintiff cannot collect more than the total amount of damages awarded, but may collect all damages from any defendant(s) found liable. With abolition of the doctrine, each defendant is now responsible for paying only his or her share of responsibility for the injury.⁵

In several respects, our findings in Arizona were distinct from those in the other four states we reviewed and in other studies.⁶ First, the average award in Arizona was \$1.5 million, double the average of \$685,000 for the other four states combined. Second, Arizona and two of the other states had a high rate of punitive damage awards relative to the remaining two states and to jurisdictions reported on in other studies.⁷ Finally, cases in Arizona were appealed less often than average; posttrial reductions to awards of compensatory damages, designed to replace the losses caused by injuries, were smaller.

⁵In 1986, a general referendum failed to abolish the constitutional prohibition against any limitation on damage awards in personal injury cases.

⁶See Mark Peterson, Syam Sarma, and Michael Shanley, *Punitive Damages: Empirical Findings* (Santa Monica, Calif.: The Rand Corporation, The Institute for Civil Justice, 1987) and Stephen Daniels, "Punitive Damages: The Real Story," *ABA Journal* (Aug. 1, 1986).

⁷In our 1989 report, 25 percent of awards in Arizona and South Carolina included punitive damages, as did 18 percent in Missouri. In contrast, only one award in North Dakota included punitive damages and no punitive damages were awarded in Massachusetts (see *Product Liability: Verdicts and Case Resolution in Five States*, p. 29). In another study, punitive damages were awarded in only six product liability cases in Cook County and San Francisco in the 25-year period ending in 1984 (see Peterson, Sarma, and Shanley, *Punitive Damages: Empirical Findings*, pp. 12-15). Only 2 of 32 jurisdictions in another study showed a rate of punitive damage awards as high as Arizona (see Daniels, "Punitive Damages: The Real Story," pp. 60-63).

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Appendix I
Cases That Went to Verdict: Accidents,
Parties, Demands, and Processing Time

Table I.3: Typical Injured Party an Adult Male, Married, and Working

Characteristic	Number	Percent
Sex		
Male	48	66
Female	22	30
Not applicable (businesses)	3	4
Total injured parties	73	100
Age category^a		
Children (1-17 years old)	10	14
Adults (18+ years old)	60	82
Not applicable (businesses)	3	4
Total injured parties	73	100
Marital status (adults only)		
Married	26	43
Single	13	22
Divorced, separated, or widowed	2	3
Not specified	19	32
Total adult injured parties	60	100
Employment status (adults only)^b		
Employed full-time	43	72
Employed part-time	3	5
Not working	6	10
Not specified	8	13
Total adult injured parties	60	100

^aOn the basis of data for 81 percent of the injured parties, the average age was 36 years old

^bIn 46 percent of the cases, the injuries occurred on the job.

Table I.4: Higher Proportion of Plaintiffs Than Defendants Went to Verdict

Party ^a	Number		Percent going to verdict
	At filing	At verdict	
Plaintiff	115	105	91
Defendant	192	96	50

^aAt filing, 56 percent of the cases had multiple plaintiffs; at verdict, 49 percent had multiple plaintiffs. For defendants, at filing, 76 percent of the cases had multiple defendants; at verdict, 39 percent had multiple defendants

Appendix I
Cases That Went to Verdict: Accidents,
Parties, Demands, and Processing Time

Table I.8: Monetary Demands Increased With Injury Severity

Dollars in thousands				
Type of injury	Number	Demands		\$1 million or more (in percent)
		Average	Median	
Wrongful death	3 ^a	\$882	\$500	33
Personal injury:	45 ^b	1,888	400	29
Permanent	38	2,187	600	32
Temporary	7	263	125	14
Property damage	4	213	139	0
All cases	52 ^{c,d}	1,701	464	27

Note: In all 52 cases, plaintiffs requested compensatory damages and, in 16 cases, compensatory and punitive damages. Compensatory damages are paid to plaintiffs to replace the loss caused by injury. These damages consist of economic damages, which cover the actual out-of-pocket expenses incurred by plaintiffs, and noneconomic damages, which cover intangible injuries such as pain and suffering. Punitive damages are given to punish intentional or flagrant wrongdoing and to deter others from similar conduct.

^aOf the 3 cases, 1 also involved personal injury

^bOf the 45 cases, 1 also involved property damage

^cData were unavailable for 7 cases. Of these 7 cases, 4 involved personal injury and 3, wrongful death.

^dDemands ranged from \$9,000 to \$17.5 million.

Table I.9: Negligence the Predominant Basis of Liability Claimed by Plaintiffs

Basis of liability	Number	Percent
Negligence only	25	42
Negligence and strict liability	15	25
Strict liability only	7	12
Negligence, strict liability, and breach of warranty	6	10
Negligence and breach of warranty	4	7
Strict liability and breach of warranty	2	3
Total	59	99^a

Note: In Arizona, plaintiffs can allege that defendants are liable for one or more reasons—negligence, strict liability, and breach of warranty. Under negligence, defendants are liable if they did not exercise due care and this lack of care caused the injury. Under strict liability, a defendant is liable if the product was defective and this defect made the product unreasonably dangerous and caused the injury. The plaintiff in a strict liability action need not prove that the manufacturer or seller failed to exercise due care, as is required in a negligence action. Under breach of warranty, a defendant is liable if the product failed to work as expressly or implicitly warranted or promised.

^aPercentages do not add to 100 because of rounding.

Verdicts: Rate and Size of Awards

Table II.1: Defendants Found Liable in Just Under One-Half of Cases

Type of injury	Cases	
	Reaching verdict	Defendants found liable
Wrongful death	6	5
Property damage	4	2
Personal injury	49	21
Total	59	28

Table II.2: Liability Rates for Key Defendant Types Similar

Type of defendant	Reaching verdict	Defendants Found liable	
		Number	Percent
Manufacturers	51	20	39
Sellers/ distributors	18	8	44
Installers/ maintainers	15	6	40
Other	12	1	8
Total	96	35	36

Table II.3: Extremely Large Awards Accounted for Majority of Total Amount Awarded

Dollars in thousands				
Size of award	Cases	Awards		Percent of total awarded
		Average	Median	
Less than \$100,000	8	\$38	\$45	1
\$100,000 to \$999,999	12	367	370	11
\$1 million and over	8	4,529	2,984	88
All cases	28 ^a	1,462	370	100

^aAwards ranged from \$8,800 to \$9 million, totaling \$40.9 million. Seven awards included punitive damages as well as compensatory damages.

Appendix II
Verdicts: Rate and Size of Awards

Table II.6: Punitive Damages Large

Dollars in thousands			
Type of damages	Cases	Awards	
		Average	Median
Compensatory and punitive damages: ^a	7	\$4,203	\$2,200
Punitive damage component ^b	c	2,245	750
Compensatory damage component	c	1,958	1,450
Compensatory damages only	21	549	325
All cases	28	1,462	370

^aJuries awarded punitive damages in 7 of 12 cases in which compensatory damages were awarded and punitive damages had been sought; punitive damages totalled \$15.7 million (or about 38 percent of the total amount awarded). Punitive damages ranged widely, from \$54,000 to \$7 million.

^bThe size of the punitive damage awards was correlated with the size of the compensatory damages. In the 3 cases with punitive damage awards over \$1 million, the compensatory damage awards were also \$1 million dollars or more. In the 2 cases with the lowest punitive damage awards (that is, awards of \$100,000 or less), the compensatory damages were less than \$55,000. On the average, punitive damages were double the size of compensatory damages.

^cNo number is given because this is a component.

Table II.7: Negligence a Basis of Liability in 3 of Every 4 Cases in Which Defendants Found Liable

Basis of liability	Number	Percent
Negligence only ^a	15	54
Negligence and strict liability ^b	6	21
Strict liability only	5	18
Not specified	2	7
Total	28	100

^aUnder negligence, a defendant is liable if he or she did not exercise due care and this lack of care caused the injury.

^bUnder strict liability, a defendant is liable if the product was defective and this defect made the product unreasonably dangerous, causing the injury. The plaintiff need not prove that the defendant failed to exercise due care, as is required under negligence.

Appendix III
Payments: Effects of Statutes and
Posttrial Activities

Table III.3: Appeals More Frequent in Cases Plaintiffs Won Than Those Defendants Won

Winning party	Cases	Appealed	
		Number	Percent
Plaintiff	28	12	43
Defendant	31	9	29
All cases	59	21 ^a	36

^aWe obtained data on the resolution of appeals for 14 cases. In 3 cases, the appeal was dismissed prior to an appellate court ruling, at the request of one or both of the parties. In the other 11 cases, the courts affirmed the initial trial verdicts in 5 cases, reversed the initial verdicts in 3 cases, and vacated the verdicts and remanded the cases for reconsideration at the trial court level in 2 cases

Table III.4: Appeals Rate Varied by Size and Type of Award

Award	Cases	Appealed	
		Number	Percent
Size			
\$100,000 or less	8	0	0
More than \$100,000	28	20	60
Type			
Compensatory damages only	21	8	38
Compensatory and punitive damages	7	4	58

Methodology

Selection of Cases

We gathered data on product liability cases resolved in 1983-85 by a judge or jury verdict. To ensure a sufficient number of cases for our analyses, we examined those that went to verdict during a 3-year period; that is, we treat the 3 years as one period, not three consecutive periods. Since appeals can take years to resolve, we estimated that cases closed in 1985 were the most recent for which we could reasonably expect all appeals to have been resolved. We examined cases that were resolved in 9 of Arizona's 15 state superior courts and in the U.S. District Court (that is, federal court) for Arizona.¹

We used two jury verdict reporters to identify product liability cases that had been tried in state superior courts.² These reporters cover the courts in nine counties: Cochise; Gila; Graham; Greenlee; Maricopa, including Phoenix; Pima, including Tucson; Pinal; Santa Cruz; and Yuma; 88 percent of the state's population live in these counties. The reporters listed 56 cases that went to verdict in 1983-85. The large majority of these cases came from Maricopa (39 cases) and Pima (16 cases) counties. We obtained a listing of cases that were resolved in federal court from the Administrative Office of the U.S. Courts.³ The Administrative Office's listing indicated that only 3 cases had gone to verdict in 1983-85.

We were unable to examine (1) any cases that may have been resolved by a judge in state court because our sources were limited to jury verdicts and (2) any cases tried by justices of the peace, who, rather than judges in superior courts, may have tried some cases with small claims (under \$2,500).⁴

Data Collection

From the jury verdict reporters and case files maintained by the courts, we obtained background information, including descriptions of accidents and parties to the lawsuits; the disposition of the cases against each

¹Cases involving state law can be heard in federal court if (1) all defendants are citizens of states different from all plaintiffs and (2) during 1983-85, at least \$10,000 was claimed in damages. Since April 1989, to be heard in federal court, the amount in controversy must be at least \$50,000.

²Reporters are listings or digests of court activities prepared by the U.S. government, state governments, or private organizations, usually for subscription sale.

³The Administrative Office's data are generally considered to be the best source for information on product liability cases.

⁴Superior courts hear all cases with claimed damages of \$2,500 or more and share jurisdiction with justices of the peace for claims between \$500 and \$2,499. Claims under \$500 are the exclusive jurisdiction of justices of the peace.

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defendant; the amount of compensatory and punitive damages demanded and awarded; and dates of various stages of case processing, from the date of the accident to final resolution. We also recorded information on posttrial activities, including appeals and settlement negotiations, as well as, when available, their outcomes. To supplement information on appeals, we searched appellate court records, when available, and a computer database that includes nationwide information on appeals (WESTLAW).

To gather information not consistently available from court files and reporters, we sent copies of a questionnaire to plaintiff and defendant attorneys who represented the parties in the cases. Attorneys were asked to report the status of the cases, payments made to date, and how the amounts were determined. Concerning payments, the questionnaire was designed so that a response from only one side in the dispute provided complete case data. We obtained complete payment data for 45 cases, 76 percent of the 59 cases.

Appendix III
Payments: Effects of Statutes and
Posttrial Activities

**Table III.5: Net Effect of Posttrial Actions
Reduced Payments by 40 Percent**

Dollars in thousands

Posttrial action	Cases		Average		Ratio of payment to award ^a
	Number	Percent	Award	Payment	
Plaintiff verdicts					
Reduced	11	24	\$2,649	\$1,186	.45 ^b
Unchanged	12	27	740	740	1.00
Defendant verdicts					
Unchanged	18	40	0	0	^c
Increased	4	9	0	127	^c
All cases	45 ^d	100	\$845	\$504	.60 ^b

Note: For purposes of this study, payments were defined as all moneys paid to plaintiffs by defendants who went to verdict, excluding payments for postjudgment interest, legal fees, liens, and pretrial settlements.

^aConsistent with previous research, this is the ratio of payments to awards for a group and not the average of ratios for individual cases

^bReduced payments in 3 cases with punitive damage awards accounted for the large majority of the reduction across all cases. Of the cases, 1 had an initial award of over \$1 million and 2 had initial awards of \$9 million. In all 3 cases, the awards were reduced by more than one-half. Excluding these cases, the payment-to-award ratio for the remaining 8 cases with reduced awards was .85 as compared with .45 including the 3 cases. Considering both cases won by plaintiffs and those won by defendants, the ratio of amounts paid to awards was .96 excluding the 3 cases

^cThe ratio is undefined because the base, average jury awards, is 0.

^dIn the survey of attorneys used to collect this information, we obtained responses for 45 of the 59 cases (see app. IV)

**Table III.6: Cases With Reduced Awards
Most Often Resolved by Posttrial
Settlements**

Reason for reduction	Cases	
	Number	Percent
Settlement	8	73
Court action	2	18
Deduction for pretrial settlement	1	9
Total	11	100

Payments: Effects of Statutes and Posttrial Activities

Table III.1: Defendants' Payments to Plaintiffs May Differ From Initial Awards as a Result of Statutory Limits and Posttrial Activities

Mechanism	Definition/description	Possible effect on award
Statute	Statutes may limit the amount that can be recovered from defendants (for example, requiring that awards be reduced by the amount of prejudgment settlements with other defendants)	Decreases award if statute sets limit (for example, under the law, prejudgment settlements with defendants who did not go to verdict would be deducted from the award)
Subrogation	The right of a person who is secondarily liable to succeed to the rights of the person he or she paid; for example, if an insurer pays the injured under an insurance policy, the company can then recover the amount paid from any subsequent award to the injured	Does not change total amount plaintiff receives; subrogation decreases the amount the defendant pays to the plaintiff; the defendant pays the subrogated amount to the person secondarily liable
Motion (request) to trial judge	Request to the trial judge to either change the verdict or grant a new trial	Trial judge may (1) decrease verdict (remittitur); (2) increase verdict (additur); (3) partially or completely overturn the verdict, thereby eliminating some or all awards, or (4) grant a new trial
Appeal	Request that an appellate court determine whether (1) sufficient evidence exists to support the verdict or (2) the trial judge made any major errors in ruling on specific matters	Appellate court may (1) decrease verdict; (2) increase verdict; (3) partially or completely overturn the verdict, thereby eliminating some or all awards; or (4) set aside the verdict in whole or in part and remand the case to the trial court for further proceedings
Settlement	Negotiated agreement between parties specifying how the case will be resolved	May increase the payment so that it is more than the verdict, decrease the payment so that it is less than the verdict, or specify a payment schedule for the original trial verdict

Table III.2: Adjustments to Awards by Trial Court Judges Reduced the Total Amount Awarded by 16 Percent

Dollars in thousands

Stage	Cases	Awards		Total awarded
		Average	Median	
At verdict	28	\$1,462	\$370	\$40,900
At judgment ^a	28	1,235	370	34,600 ^b

^aIn each of 3 cases, the trial court judge adjusted the initial award. In 2 cases, because of a statutory requirement, the initial award was reduced by the amounts of settlements between plaintiffs and defendants who had not gone to verdict. In 1 of these cases, the judge also reversed a \$6-million punitive damage award; this reversal accounts for most of the reduction in total amount awarded. In the third case, the judge increased the award amount.

^bAt judgment, the expected award was \$586,000. Expected award is the average award across all cases, including those won by defendants.

Appendix II
Verdicts: Rate and Size of Awards

Table II.4: Total Award Amount for Compensatory and Punitive Damages Varied by Type and Severity of Injury

Dollars in thousands				
Injury type	Cases	Awards		
		Average	Median	Expected ^a
Personal injury ^b	21	\$1,750	\$405	\$750
Wrongful death	5 ^c	801	500	668
Property damage ^d	2 ^c	98	98	98
All cases	28	1,462	370	694

^aExpected award is the average award across all cases, including those won by defendants. Of the three ways of describing the typical award, the expected award is the best indicator of what plaintiffs received across all cases that went to verdict

^bAmong personal injury cases, larger awards were given for permanent disability than for temporary disability. For the 19 cases involving permanent disability in which defendants were found liable, the average award was \$1.9 million and the median award, \$450,000. Awards in the two cases involving temporary disability were \$9,000 and \$335,000.

^cThe average, median, and expected awards can be extremely unreliable when only a few cases are considered

^dThe 2 awards in property damage cases were for \$15,000 and \$180,000.

Table II.5: Compensatory Damages Varied by Type and Severity of Injury

Dollars in thousands				
Injury type	Cases	Awards		
		Average	Median	Expected ^a
Personal injury ^b	21	\$1,078	\$405	\$462
Wrongful death	5	481	375	401
Property damage ^c	2	98	98	98
All cases	28 ^d	901	355	428

^aExpected award is the average award across all cases, including those won by defendants.

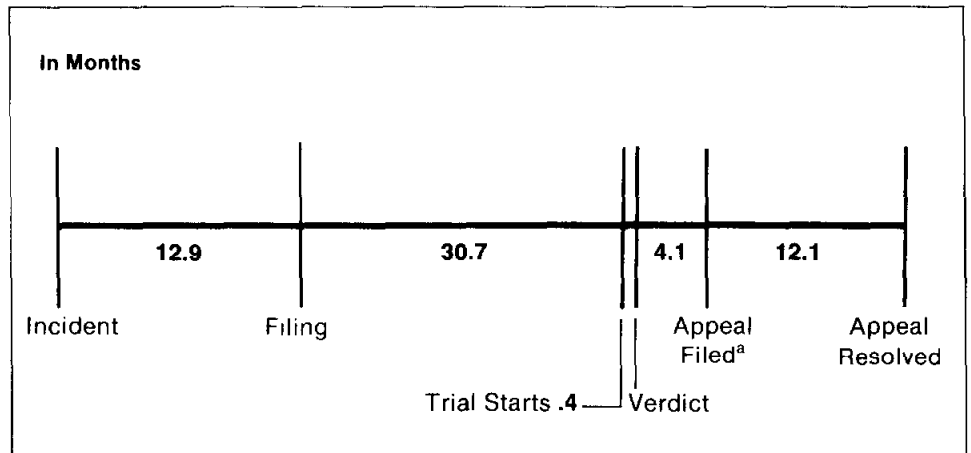
^bAs might have been expected, among personal injury cases, larger compensatory damage awards were given for permanent disability than for temporary disability. In the 19 cases involving permanent disability in which defendants were found liable, the average compensatory award was \$1.2 million and the median award, \$450,000. Awards in the 2 cases involving temporary disability were \$9,000 and \$335,000.

^cIncludes the 2 awards in property damage cases, which were for \$15,000 and \$180,000

^dCompensatory awards ranged from \$9,000 to \$6.8 million, totaling \$25.2 million

Appendix I
Cases That Went to Verdict: Accidents,
Parties, Demands, and Processing Time

Figure I.1: On Average, Cases Took 2-1/2 Years to Reach Verdict and Appeals 1 Year to Resolve



Note: Time between verdict and filing of appeal primarily reflects the time required to resolve parties' motions (requests) to the trial judge (for example, a motion for a new trial or a motion for a reduction in the award) During this time, parties submit briefs (arguments) in support of their positions on the motions and the judge considers and rules on them.

Appendix I
Cases That Went to Verdict: Accidents,
Parties, Demands, and Processing Time

Table I.5: Majority of Plaintiffs Who Went to Verdict Were Those Harmed by Products

Plaintiff type	Number	Percent
Injured parties	61	58
Spouses	19	18
Parents	9	9
Children	7	7
Other ^a	9	9
Total	105	101^b

^a"Other" plaintiffs are primarily insurance companies suing to recover insurance payments to injured parties

^bPercentages add to more than 100 due to rounding.

Table I.6: Majority of Defendants Who Went to Verdict Were Manufacturers

Defendant type	Number	Percent
Manufacturers ^a	51	53
Seller/distributors ^b	18	19
Assembler/installers	10	10
Other ^c	17	18
Total	96	100

^aIn this category, 48 manufactured the finished product and 3 a component part.

^bIn 32 cases, 33 product sellers were named in the complaints. When the cases went to verdict, 18 sellers remained in 17 cases, a drop-out rate comparable with that for all defendants.

^cThis category includes a variety of types of defendants, such as employers and owners of the companies that were sued.

Table I.7: Most Plaintiffs Resided in Arizona and Most Defendants Were Headquartered in Other States

State	Number	Percent
Plaintiff residence		
Arizona	92	88
Other states	7	7
Not specified	6	6
Total	105	101^a
Defendant headquarters		
Arizona	21	22
Other states	57	59
Not specified	18	19
Total	96	100

^aPercentages do not add to 100 because of rounding.

Cases That Went to Verdict: Accidents, Parties, Demands, and Processing Time

Table I.1: Large Minority of Accidents Involved Machinery

Product type	Number	Percent
Machinery	26	43
Vehicle	8	13
Ladder	4	7
Drug	4	7
Other ^a	19	31
Total	61^b	101^b

^aThis category includes a variety of products, such as food and chemical substances.

^bBecause 2 cases involved multiple products, (1) the total number of products exceeds 59, the total number of cases, and (2) the percentages total more than 100.

Table I.2: Majority of Injured Parties Suffered Personal Injury

Injury type	Number	Percent
Personal injury:		
Permanent partial disability	33	56
Permanent total disability	8	14
Temporary partial disability	5	8
Temporary total disability	4	7
All personal injury	50	85
Death	6	10
Property damage	5	9
Total	61^a	104^a

^aBecause 2 cases each involved 2 types of injury, (1) the number of injuries is more than 59, the total number of cases, and (2) the percentages total more than 100. The first case was personal injury with death, the second, property damage

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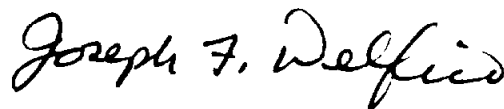
Scope and Methodology

In this report, we provide information for 59 product liability cases that were resolved through verdicts in 1983-85 in 9 of Arizona's 15 state superior courts and in the U.S. District Court (federal court) in Arizona. Of the 59 cases we studied, 56 were heard in state courts. The 9 state superior courts cover 88 percent of the state's population and nine counties, encompassing the largest urban counties of Maricopa (including Phoenix) and Pima (including Tucson). We describe

- the accidents giving rise to product liability cases, the parties to the cases, the allegations and demands contained in plaintiffs' complaints, and the amount of time spent at each stage of cases — from the accidents to final court actions (see app. I);
- the percentage of cases in which defendants were found liable, the bases of liability, and the amount of compensatory and punitive damages awarded (see app. II); and
- the frequency of posttrial adjustments to awards and actual payments made to plaintiffs after verdict (see app. III).

For a discussion of the methodology used to identify cases and collect data, see appendix IV.

We are sending copies of this report to members of Congress, state legislators and officials, and other interested parties. The report is also available on request. If you have any questions, please call me on (202) 275-6193. Other major contributors are listed in appendix V.



Joseph F. Delfico
Director, Income Security Issues

cases.² We are addressing these reports to you because the Subcommittees you chair have recently held hearings and the full Committees have reported favorably the proposed legislation to establish uniform product liability laws.³ In this report, we present information for Arizona.

Background

Generally, proposed reforms have been designed to remedy alleged problems in the tort system, including increasingly large awards and high litigation costs. Defendants have claimed that the basis of liability has shifted from liability based on intent or negligence toward a de facto no-fault liability system financed entirely by manufacturers. Data limitations have fueled debate on (1) the magnitude of these problems and (2) whether reforms would alleviate them.

In our earlier report on product liability, we analyzed data on (1) the frequency and size of awards and payments, (2) liability standards used to decide cases, (3) posttrial activities and adjustments to awards, (4) time and cost of litigation, and (5) potential effects of federal reform measures. We collected these data for cases in Arizona, Massachusetts, Missouri, North Dakota, and South Carolina.⁴ Not surprisingly, we found significant differences from state to state.

We concluded that, in general, (1) damage awards in the five states were strongly associated with severity of the injury and, presumably, the underlying economic loss and (2) liability was still based largely on negligence. We found that appeals and posttrial settlement negotiations reduced the size of the majority of awards over \$1 million. Appellate courts also eliminated many punitive damage awards (which are designed to punish flagrant or intentional wrongdoing and to deter others from similar conduct). These activities, however, added to the substantial cost and time required to resolve claims.

²We are not issuing a separate report for one of the states, North Dakota, because of the small number of cases in that state.

³In May 1990, the Committee on Commerce, Science, and Transportation reported S. 1400, the Product Liability Reform Act of 1989, favorably to the Senate. In June 1988, the Committee on Energy and Commerce reported H.R. 1115, the Uniform Product Safety Act of 1988, favorably to the House. In December 1987, the Subcommittee on Commerce, Consumer Protection, and Competitiveness had approved that bill.

⁴We based our selection of states on (1) whether product liability cases could be identified without manually searching thousands of case files, (2) the amount of information already published on product liability litigation in the jurisdictions, and (3) the relative costs associated with obtaining the information. The five states offer a mix in terms of region of the country, degree of urbanization, numbers of manufacturers and manufacturing employees, and tort laws (see Product Liability: Verdicts and Case Resolution in Five States, pp. 76-77).

